



[OMB No. 3064-NEW]

## **Agency Information Collection Activities: Proposed Collection Renewal; Comment Request**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the new information collection described below.

**DATES:** Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website:* <https://www.fdic.gov/resources/regulations/federal-register-publications/>.
- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov). Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202-898-3767), Regulatory Counsel, MB-3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to “False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo.” A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory

Affairs, Office of Management and Budget, New Executive Office Building,

Washington, DC 20503.

**FOR FURTHER INFORMATION, CONTACT:** Manny Cabeza, Regulatory

Counsel, 202-898-3767, [mcabeza@fdic.gov](mailto:mcabeza@fdic.gov), MB-3128, Federal Deposit Insurance

Corporation, 550 17th Street NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

Proposal to establish a new collection of information:

1. Title: False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo.

2. OMB Number: 3064-NEW

Affected Public: Non-bank entities that make statements regarding the extent or manner of deposit insurance provided.

Burden Estimate:

Summary of Estimated Annual Burden (OMB No. 3064-NEW)					
Information Collection (Obligation to Respond)	Type of Burden (Frequency of Response)	Number of Respondents	Number of Responses per Respondent	Time per Response (HH:MM)	Annual Burden (Hours)
<b>Implementation</b>					
Insured Depository Institution Relationships (12 CFR part 328.102(b)(5)) (Mandatory)	Disclosure (Occasional) (Annual)	500	1	02:00	1,000
<b>Implementation Total</b>					1,000
<b>Ongoing</b>					
Insured Depository Institution Relationships (12 CFR part 328.102(b)(5)) (Mandatory)	Disclosure (Occasional) (Annual)	1,500	1	00:30	750
<b>Ongoing Total</b>					750
Source: FDIC.					
Note: Annual burden estimates for a given collection are calculated first by multiplying the number of respondents by the number of responses per respondent and rounded to the nearest whole number, which represents the total number of annual responses. This number is then multiplied by the time per response to obtain the estimated annual burden for that collection.					

General Description of Collection:

The FDIC recently issued a final rule entitled “False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo” (The Final Rule)<sup>1</sup> that established the process by which the Federal Deposit Insurance Corporation (FDIC) will identify and investigate conduct that may violate section 18(a)(4) of the Federal Deposit Insurance Act, the standards under which such conduct will be evaluated, and the procedures which the Federal Deposit Insurance Corporation will follow when formally and informally enforcing the provisions of section 18(a)(4) of the Federal Deposit Insurance Act. The Final Rule amended FDIC regulations under 12 CFR part 328 (part 328). In particular, certain amendments to part 328 impose disclosure requirements for non-bank entities that make certain types of statements regarding deposit insurance.<sup>2</sup>

Section 18(a)(4) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1828(a)(4) (Section 18(a)(4)), prohibits any person from engaging in false advertising by misusing the name or logo of the FDIC or from making knowing misrepresentations about the existence of or the extent or manner of deposit insurance.<sup>3</sup> Section 18(a)(4) provides the FDIC independent authority to investigate and take administrative enforcement actions, including the power to issue cease and desist orders and impose civil money penalties, against any person who misuses the FDIC name or logo or makes misrepresentations about deposit insurance. Part 328 sets out the FDIC’s signage and advertising rules. The Final Rule established a new subpart B to part 328, entitled “False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo” containing the new regulations. Section 328.102 of subpart B

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<sup>1</sup> 87 FR 33415 (June 2, 2022).

<sup>2</sup> 12 CFR 328.102(b)(5)

<sup>3</sup> Under Federal law, it is also criminal offense to misuse the FDIC name or make false representations regarding deposit insurance. *See* 18 U.S.C. 709.

sets forth the conduct that is prohibited by Section 18(a)(4). It further provides transparency by setting forth the FDIC's interpretation of the scope of prohibited conduct, including specific examples of conduct that the FDIC deems to violate Section 18(a)(4). The section further sets forth certain standards that the FDIC will use to determine if a statement violates Section 18(a)(4). Section 328.102 establishes that a statement regarding deposit insurance will be deemed to omit material information if it does not identify the insured depository institution(s) with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumer's deposits may be placed. Thereby, the Final Rule establishes third-party disclosure requirements for non-bank entities that make statements regarding the extent or manner of deposit insurance provided. These disclosure requirements constitute an information collection under the Paperwork Reduction Act (PRA) of 1995. As such, the FDIC is required to obtain OMB approval of this new information collection. The PRA burdens imposed by § 328.102 can be categorized into two distinct burdens: 1) implementation burdens that are incurred once by each respondent to set up policies and procedures to ensure that its statements regarding deposit insurance comply with the requirements in § 328.102; and 2) ongoing burdens that are incurred every year by each respondent to maintain compliance with these requirements. Since these burdens have separate frequencies and times per response, the FDIC is listing and estimating these two burdens separately.

Potential respondents to this new information collection are non-bank entities that make statements regarding the extent or manner of deposit insurance provided. The FDIC does not have direct data on the number of non-bank entities that would be affected by this requirement upon implementation. FDIC believes

that the non-bank entities affected by the requirement would generally be classified in the following North American Industry Classification System (NAICS) industries: Miscellaneous Financial Investment Activities (NAICS Code 523999), Financial Transaction Processing, Reserve & Clearinghouse Activities (NAICS Code 522320), Computer System Design and Related Services (NAICS Code 5415), and Investment Advice (NAICS Code 523930). According to recent Census data, there were 144,556 firms in these NAICS industries in 2019, the most recent year for which such data is available.<sup>4</sup> However, FDIC believes that the requirement will only affect approximately one percent of firms in these industries. Therefore, the FDIC estimates that approximately 1,500 non-bank entities will be affected by the third-party disclosure requirement.<sup>5</sup>

The 1,500 firms affected by this ICR are expected to implement policies and procedures to ensure that its statements regarding deposit insurance identify its partner insured depository institution(s), as described in § 328.102, in the year in which the adopted regulation becomes effective. Annualized over a 3-year approval period, the average annual number of affected firms is 370. FDIC is conservatively assuming approximately 500 annual respondents to the implementation burden.

In order to maintain compliance with the requirements of part 328, each of the 1,500 firms described above must regularly update its statements regarding deposit insurance to ensure that the statements continually identify the insured depository institution(s) described in § 328.102. As such, FDIC estimates 1,500 annual respondents to the ongoing burden.

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<sup>4</sup>  $(1,110 + 3,163 + 120,070 + 20,213 = 144,556)$  2019 County Business Patterns. See number of firms at <https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html>, last retrieved on June 30, 2022.

<sup>5</sup>  $0.01 * 144,556 \approx 1,500$

The activities that respondents undergo to implement policies and procedures to comply with part 328 can all be considered part of a single response to the implementation requirement. Therefore, FDIC uses one as the number of annual responses per respondent for implementation. Similarly, activities throughout the year that are performed by respondents to maintain compliance with part 328 can all be considered as parts of a single annual response on an ongoing basis. FDIC uses one as the number of annual responses per respondent for the ongoing burden. Based on supervisory experience, FDIC estimates that the annual burden for each non-bank entities to disclose the Insured Depository Institution(s) with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumer's deposits may be placed to be 2 hours per response for implementation and 0.5 hours per response on an ongoing basis.

#### Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 1, 2022.

**James P. Sheesley,**

*Assistant Executive Secretary.*

**BILLING CODE 6714-01-P**

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